

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA B. WESCH and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, Mich.

*Docket No. 96-1053; Submitted on the Record;
Issued January 22, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the appellant sustained a recurrence of disability from October 6, 1994 through January 10, 1995 causally related to her accepted September 9, 1993 employment injury.

On September 9, 1993 appellant, a 47-year-old mail clerk, tripped over a large parcel and fell to the ground, injuring her left knee and lower back. She filed a Form CA-1 claim for benefits based on traumatic injury on September 9, 1993, seeking continuation of pay. Appellant was off work from September 10 through September 28, 1993, when she returned to work on a limited, 4 to 5 hours per day basis; appellant began to work 6 hours per day as of October 14, 1993. Appellant's claim was accepted by the Office of Workers' Compensation Programs for left knee strain and lumbar strain on December 1, 1993. Appellant was released to return to full duty at her regular job on March 15, 1994 by her treating physician, Dr. Kevin P. Hanlon, an osteopath.

Appellant continued to suffer pain in her left knee and lower back and missed work periodically due to her left knee and lower back conditions. Appellant filed a Form CA-7 claim for periodic wage loss on April 2, 1994 and the Office, by two letters dated May 12, 1994, approved compensation for the period November 15, 1993 through March 18, 1994.

On February 7, 1995 appellant filed another Form CA-7 claim for compensation, claiming total disability for the period October 6, 1994 through January 10, 1995. Appellant submitted a Form CA-20 from Dr. Hanlon dated October 20, 1994, in which he diagnosed patellofemoral unbalance with chondromalacia patella, indicated that appellant was totally disabled from October 6, 1994 through January 10, 1995, and checked a box indicating that he believed the condition found was caused or aggravated by an employment activity based on appellant's statement that she fell while at work. Appellant also submitted an office note and referral slip from Dr. Hanlon dated October 18, 1994, which indicated that appellant would be totally disabled until she underwent electromyographic (EMG) nerve conduction studies and a

second opinion examination with Dr. David S. Weingarden, Board-certified in physical medicine and rehabilitation. The EMG was performed on December 27, 1994 by Dr. Weingarden's associate, Dr. David K. Davis, a specialist in physical medicine and rehabilitation and revealed there was soft evidence for an old right S1 radiculopathy which was not active at that time and that there was no other active radiculopathy, peripheral neuropathy or plexopathy. Appellant also submitted an office note dated October 31, 1994 from Dr. John Geralt, a specialist in emergency medicine and occupational medicine, which indicated that appellant was able to work with restrictions as of October 12, 1994 and office notes from Dr. Hanlon dated October 18 through December 29, 1994 indicating that appellant continued to suffer pain, weakness, and tenderness in her left knee and back.

In a letter dated February 23, 1995, the Office informed appellant that it had received her Form CA-7 and had accepted her claim that her September 9, 1993 employment injury resulted in left knee strain, lumbar strain and chondromalacia in her left knee, but that it required a well-rationalized medical opinion supporting her claim that she was totally disabled from October 6, 1994 to January 11, 1995 due to her employment injury of September 9, 1993. The Office requested that the physician indicate the specific condition responsible for the period of disability and how this condition was due to the September 9, 1993 employment injury, and that the physician provide objective findings to support the level of disability.

In response, appellant submitted a March 31, 1995 medical report from Dr. Hanlon, which indicated appellant had exacerbations of pain in her left knee and was unable to squat or kneel on her knee, secondary to her underlying condition without pain. The report also stated that appellant's work activities should be limited to avoid squatting or kneeling on the knee. In addition, appellant submitted an office note from Dr. Hanlon dated January 10, 1995, progress notes from Dr. Hanlon dated February 24 through March 6, 1995, plus a physical therapy progress report dated March 3, 1995.

By decision dated July 19, 1995, the Office rejected appellant's claim, finding that the medical evidence appellant submitted was not sufficient to establish causal relationship between her accepted September 9, 1993 employment injury and the claimed disability or condition from October 6, 1994 through January 10, 1995. In an accompanying memorandum, the claims examiner stated that appellant was advised of the deficiencies in the medical evidence in the Office's February 23, 1995 letter but that it had not received a rationalized medical opinion sufficient to establish that the claimed disability was caused, precipitated, accelerated or aggravated by the accepted September 9, 1993 employment injury. The Office therefore denied compensation from October 6, 1994 through January 10, 1995.

In a handwritten letter to the Office dated September 21, 1995, appellant requested a review of her case.

In a letter to appellant dated September 13, 1995, the Office stated that it was denying appellant's request for a hearing.¹ The Office stated that appellant's request was untimely, noting that her request was rendered well beyond the 30-day time limit permitted under the Act.² The Office stated that appellant could request reconsideration of her claim if she had additional evidence to submit.

The Board finds that appellant has not sustained a recurrence of disability from October 6, 1994 through January 10, 1995 causally related to the September 9, 1993 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.³

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion that relates her disability for work from October 6, 1994 through January 10, 1995 to her September 9, 1993 employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted were medical reports, office notes and progress notes from Dr. Hanlon which described appellant's complaints of left knee and back pain but did not include a rationalized, probative medical opinion indicating that her current condition was caused or aggravated by the accepted September 9, 1993 employment injury. Appellant did submit the October 18, 1994 office note and referral slip from Dr. Hanlon indicating that she would be totally disabled until she underwent an EMG and a second opinion examination by Dr. Weingarden. Neither of these documents, however, contained a rationalized medical opinion regarding whether appellant's condition from October 6, 1994 through January 10, 1995 was caused or aggravated by her work injury of September 9, 1993.⁴

Furthermore, the October 20, 1994 Form CA-20 by Dr. Hanlon which indicated appellant was totally disabled from October 6, 1994 through January 10, 1994 and supported causal

¹ In her September 21, 1995 letter to the Office, appellant requested a "review" of the Office's July 19, 1995 decision but did not specifically request a hearing, despite the fact that the Office's September 13, 1995 letter states that she did. Appellant did not request reconsideration of the July 19, 1995 decision, although the Office gave her the opportunity to do so.

² 5 U.S.C. § 8124 (b)(1)

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

relationship with a checkmark is insufficient to establish a claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.⁵

As there is no medical evidence addressing and explaining why the claimed condition and disability from October 6, 1994 through January 10, 1995 was caused or aggravated by her September 9, 1993 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

The July 19, 1995 decision of the Office of Workers' Compensation Programs is therefore affirmed.

Dated, Washington, D.C.
January 22, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).